

**MICHAEL C. CORRIGAN**  
Claimant

**DEGGINGER'S FOUNDRY**  
Respondent

**COMMERCIAL UNION INS. CO.**  
Insurance Carrier

**KANSAS WORKERS COMPENSATION FUND**

The appealed Order was one which denied respondent's request to add Commercial Union Insurance as the insurance carrier in this case. Respondent contends Commercial Union should be added as the insurance carrier for a January 29, 1996, injury because, according to respondent, Commercial Union did not comply with statutory requirements in 1989 or 1990 when it canceled coverage of respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes the appeals should be dismissed because the Board does not have jurisdiction of the issue raised.

**Findings of Fact**

1. Claimant brought this claim for injury on January 29, 1996, when he inhaled welding fumes while working for respondent.
2. On April 17, 1996, a preliminary hearing was held. Respondent did not appear and benefits were ordered.
3. On June 5, 1996, counsel entered appearance for respondent and, on July 11, 1996, respondent's counsel moved to add Commercial Union as the responsible insurance carrier, claiming Commercial Union had failed to follow the proper statutory procedure to cancel its coverage of respondent.
4. Commercial Union carried a policy of insurance covering respondent for workers compensation injuries for a period beginning in 1989 and ending November 1990.
5. In 1987, the Kansas Division of Workers Compensation notified all insurance carriers to send notices of nonrenewal and cancellation to NCCI. This was done pursuant to a directive issued on May 11, 1987, by Richard H. Smelser of the Division.
6. Commercial Union sent notice to NCCI in 1990 advising it was not renewing the policy covering respondent. Commercial Union did not send notice directly to the Director or otherwise directly to the Kansas Division of Workers Compensation. Had Commercial Union sent notice to the Director or the Division, the notice would have been returned.
7. On September 24, 1998, respondent and the Kansas Workers Compensation Fund settled the claim with claimant. Respondent and the Fund each paid a portion of the settlement and both stated they were reserving their claims against Commercial Union.

**Conclusions of Law**

1. K.S.A. 44-532(d)(1) governs nonrenewal and cancellation of workers compensation insurance policies. The version applicable in 1990 when Commercial Union sent notice of nonrenewal provided:

Every insurance carrier writing workers' compensation insurance for any employment covered under the workers compensation act shall file, with the director, written notice of the issuance, nonrenewal or cancellation of a policy . . . . (*Emphasis added.*)

2. The Board is asked by this appeal to determine whether Commercial Union notice of nonrenewal sent to NCCI was ineffective and whether as a consequence Commercial Union remained respondent's workers compensation insurance carrier for occupational diseases or accidents on January 29, 1996.

3. The Board concludes the issue raised by this appeal is not an issue over which the Appeals Board has jurisdiction. The Board has jurisdiction to decide insurance coverage issues only when they affect the rights of the claimant. The issue raised by this appeal does not affect the rights of the claimant. *American States Ins. Co. v. Hanover Ins. Co.*, 14 Kan. App. 2d 492, 794 P.2d 662 (1990). This case differs from *Helms v. Tollie Freightways, Inc.*, 20 Kan. App. 2d 548, 889 P.2d 1151 (1995). There the Court of Appeals ruled that, under the circumstances, the Board did have jurisdiction to decide which of two insurance carriers was responsible for benefits. The circumstances were that the parties agreed to the dates of coverage by two carriers but disagreed as to the date of accident. By deciding the date of accident, the Board, in effect, decided which carrier had coverage. The *Helms* decision did not, in our view, intend to grant jurisdiction over insurance coverage issues generally and did not extend jurisdiction to the issue presented here.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the appeals of the Order entered February 12, 1998, should be, and are hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1999.

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BOARD MEMBER

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c: Michael J. Unrein, Topeka, KS  
John A. Bausch, Topeka, KS  
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Jerry R. Shelor, Topeka, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director